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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	)	CC Docket No. 96-149
	)	
and	)	
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	DOCKET FILE COPY ORIGINAL

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

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SUMMARY

The Commission must promulgate rules in this proceeding to ensure that competition in the local exchange and interexchange service markets continues to thrive once the Regional Bell Operating Companies ("RBOCs") enter the interLATA market in their local service regions. Sections 271 and 272 of the 1996 Act are intended to set the general parameters for RBOC entry into the interLATA market, prevent cross-subsidization between local and interLATA services, and prohibit anti-competitive behavior that would threaten the vitality of local exchange service. However, some RBOCs have already engaged in a strategy to circumvent the Section 272 separate affiliate requirement for interLATA telecommunications services, information services, and manufacturing. In California, Michigan, Wisconsin, Illinois, and Ohio, RBOC affiliates have applied to the respective state commissions to provide interLATA, intraLATA toll, and local exchange services. Using this tactic, the affiliate will attempt to do what the RBOC itself cannot — offer long distance and local exchange service in the same area by the same entity.

The provision by an RBOC and/or its affiliate of both local exchange service and interLATA service presents a classic example of vertical integration. In this case, the RBOC has market power in the local exchange market and can use that power to acquire an advantage in a vertically related market — in-region, interLATA service. While the separate affiliate requirement of Section 272 is intended to address this concern, the Commission must take the additional step of clarifying that an RBOC cannot circumvent this restriction by having its affiliate provide both interLATA and local exchange service. Although the 1996 Act lays

to rest the absolute prohibition upon RBOCs from entering the long distance market, it certainly does not portend a return to market dominance through participation in both the long distance and local markets. However, this will be the result if RBOCs are permitted to discriminate in favor of the affiliate and to the detriment of competitors for whom the local network is essential to their business.

TCG proposes that the Commission implement a four prong approach to help prevent the threat of cross-subsidization and discrimination once RBOCs enter the interLATA market. First, the Commission must clarify that an RBOC affiliate that provides in-region, interLATA service may not also provide local exchange service. Second, and equally as important, non-discrimination safeguards must include reporting requirements by which competitors and the Commission can analyze objectively the RBOC's service record with competitors as compared to itself or its affiliates. Third, structural safeguards that are comparable to those established in the Competitive Carrier proceeding and that require a strict separation between the parent and the affiliate must be imposed. Finally, an expedited complaint process must be implemented to address claims that RBOC service to a competitive carrier is of lower quality in, for example, timing and pricing than to itself or its affiliate. Only by promulgating these regulations will the Commission provide sufficient regulatory safeguards to protect against the antitrust concerns of cross-subsidization and discrimination that Congress has attempted to address in enacting Sections 271 and 272.

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COMMENTS

Teleport Communications Group Inc. ("TCG") hereby submits its Comments on the Commission's Notice of Proposed Rulemaking in the captioned proceeding.[1/]

I. INTRODUCTION

By this proceeding, the Commission must ensure that competition in the local exchange and interexchange service markets continues to thrive once the Regional Bell Operating Companies ("RBOCs") enter the interLATA market in their local service regions. Sections 271 and 272 of the 1996 Act are intended to set the general parameters for RBOC entry into the interLATA market, prevent cross-

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[1/] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-308, released July 18, 1996 ("NPRM").

subsidization between local and interLATA services, and prohibit anti-competitive behavior that would threaten the vitality of local exchange service. The Commission has just completed the arduous task of adopting rules to implement the cornerstone of the 1996 Act, Sections 251 and 252, widening the door for local competition. The regulations that are implemented in this proceeding must preclude discriminatory behavior that would effectively shut that door on local competition by permitting RBOCs to use its position as the incumbent local exchange carrier ("ILEC") to solidify its market power, before competition can develop. These regulations must include RBOC reporting requirements that reveal the RBOC's record with respect to service to itself and its affiliates as compared to competitors.

As the Commission correctly observed in its NPRM, an RBOC that offers vertically integrated local exchange service and some combination of interLATA, manufacturing, and information services on an unrestricted basis may be inclined to gain a competitive advantage in one or each of its markets by:

> 1) providing exchange access services to [an RBOC's] interLATA service affiliate at a lower rate than the rate offered to competing interLATA service providers;
>
> 2) providing a higher quality service to its interLATA service affiliate than the service it provides to competing interLATA service providers at the same price;
>
> 3) purchasing products needed for its local exchange network that are manufactured by its affiliate even when the affiliate's competitors offer the same or higher quality product at a lower price, or a higher quality product at the same price charged by the affiliate; or

4) providing advance information about network changes to its competitive affiliates.[2]

Indeed, some RBOCs have already engaged in a strategy to facilitate recreation of the market dominance they held prior to the break-up of AT&T by the Modified Final Judgement in 1982. In California, Michigan, Wisconsin, Illinois, and Ohio, affiliates of Pacific Bell and Ameritech have applied to the respective state commissions to provide interLATA, intraLATA toll, and local exchange services. Not only are such applications premature, as no RBOC has been found to have met the competitive checklist of Section 271, but this tactic signifies a "backdoor" effort to circumvent the separate affiliation requirements in Section 272, because the affiliate will attempt to do what the RBOC itself cannot — offer long distance and local exchange service in the same area by the same entity.

In proceedings before the Public Utilities Commission of California, the Michigan Public Service Commission, the Public Service Commission of Wisconsin, the Illinois Commerce Commission, and the Ohio Public Utilities Commission, affiliates of Pacific Bell (in California) and Ameritech (in Michigan, Wisconsin, Illinois, and Ohio) have attempted to acquire certificates of authority from the respective commissions to offer interLATA, intraLATA toll, and local exchange service. For example, Pacific Bell's affiliate, PB Com, seeks authority in California to provide "a full range of facilities-based and resold telecommunications services, including without limitation, interLATA, intraLATA and local exchange

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[2] NPRM at ¶ 13 (footnote omitted).

telecommunications services throughout the State of California."[3] This new affiliate forecasts that it will have over one million customers within a year and over four million customers within five years.[4] The only explanation for this confident outlook is that an affiliate operating in the same building, with officers that appear to retain ties to the parent, without substantive guarantees of independence from the parent to satisfy Section 272, shares its identity with the parent and intends to take advantage of the parent's competitive resources, contrary to the 1996 Act.

Ameritech appears to be contemplating a similar arrangement in Michigan, Wisconsin, Illinois, and Ohio. In these states, Ameritech has established a so-called "separate" subsidiary, Ameritech Communication, Inc. ("ACI") to provide bundled resold local and intraLATA toll services. In the long run, Ameritech claims that ACI intends to become a facilities-based local exchange provider and obtain approval from the Commission to provide in-region long distance service as well. The existence of ACI, however, raises the risk that Ameritech Michigan, Ameritech Wisconsin, Ameritech Illinois, and Ameritech Ohio will discriminate in favor of their affiliates by providing more favorable rates, terms, and conditions for

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[3] PB Com Application for a Certificate of Public Convenience and Necessity (noticed on March 6, 1996).

[4] <u>See</u> Application of Pacific Bell Communications for a Certificate of Public Convenience and Necessity to Provide InterLATA, IntraLATA and Local Exchange Telecommunications Services within the State of California, Application No. 96-03-007, California Telecommunications Coalition and Association of Directory Publishers Joint Protests to Application (filed April 11, 1996) at 26.

interconnection arrangements, wholesale resale services, and unbundled network elements. This concern is magnified by irrefutable evidence of record in ACI's application in Michigan that Ameritech has cross-subsidized ACI's start-up costs in the amount of approximately $90,000,000.[5] The Wisconsin PSC staff has expressed its opinion that such an arrangement threatens competition, because older and less sophisticated technology and infrastructure would likely be segregated to the non-competitive entity. "[R]esellers . . . dependent upon the in-place facilities of [Ameritech in Wisconsin] will find them increasingly obsolete, thereby making the resellers' own packages of services less competitive."[6] Basically, the parent will have every incentive to transfer assets, facilities, personnel, and proprietary information to its affiliate that will then be able to provide local exchange service at lower rates than its competitors.

Given that some RBOCs have already telegraphed their intention to provide local exchange service and in-region, interLATA service from the same entity prior to the sunset of the separate affiliation rules, this Commission must promulgate

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[5] See Application of Ameritech Communications, Inc. for a License to Provide Basic Local Exchange Service to Ameritech Michigan and GTE North, Inc. Exchanges in Michigan, Michigan Public Service Commission, Case No. U-11053. The testimony of ACI's Vice President of Finance states that in Michigan alone Ameritech's absorption of ACI expenses is at a minimum $90 million. Tr. at 425-427 (April 25, 1996). TCG's expert witness concluded that "[t]his is a textbook case of cross-subsidy, and definitely eradicates any notion that Ameritech Michigan and ACI are operating as separate affiliates." Id., Direct Testimony of Dr. Paul Teske at 12.

[6] Application of Ameritech Communications of Wisconsin, Inc. for Certification as a Telecommunications Carrier, 139 NC-100, Comments of Staff (June 5, 1996) at 8.

detailed regulations policing such RBOC activities. Therefore, TCG urges that the Commission take the following action: first, the Commission must clarify that an RBOC affiliate that provides in-region, interLATA service may not also provide local exchange service. Second, and equally as important, non-discrimination safeguards must include reporting requirements by which competitors and the Commission can analyze objectively the RBOC's service record with competitors as compared to itself or its affiliates. Third, structural safeguards comparable to those established in the Competitive Carrier proceeding must be imposed. Finally, an expedited complaint process must be implemented to address claims that RBOC service to a competitive carrier is of lower quality than to itself or its affiliate. Only by promulgating these regulations will the Commission provide sufficient regulatory safeguards to protect against the antitrust concerns of cross-subsidization and discrimination that Congress has attempted to address in enacting Sections 271 and 272.

II. RBOC AFFILIATES PROVIDING IN-REGION, INTERLATA SERVICE MUST BE EXPLICITLY PROHIBITED FROM ENTERING THE LOCAL EXCHANGE MARKET

The non-accounting safeguards required by Sections 271 and 272 of the 1996 Act are intended to prevent the RBOCs from improperly exercising market power in the local market as a means to gain advantage over competitors in the local exchange service market; the in-region, interLATA service market; as well as in manufacturing and information service markets. While these safeguards will be essential to preserve the opportunity for CLECs to compete as providers of local exchange service, they will be worthless if RBOCs are permitted to circumvent those safeguards by providing interLATA and local exchange service through the same affiliate. The Commission therefore must clarify that Sections 271 and 272 prohibit an affiliate from providing in-region, interLATA service while also providing local exchange service.

TCG agrees with the Commission's tentative conclusion that "if a BOC affiliate is engaged in local exchange activities and is therefore subject to section 251(c), then the local exchange affiliate would be subject to 272(c) requirements when dealing with BOC affiliates engaged in competitive activities."[7] In light of recent RBOC activities contrary to this interpretation,[8] the Commission must clarify that pursuant to Section 272, no RBOC affiliate is permitted to obtain authority to provide local exchange and in-region, interLATA service prior to the sunset of the separate affiliate requirement. An RBOC affiliate that offers a full panoply of local exchange service must be expressly prohibited from also providing in-region, interLATA service.

Sections 272(a) and 272(e) both apply expressly to a "Bell operating company (including an affiliate)" or a "Bell operating company and an affiliate." Section 272(a) appears to require that an affiliate that is a local exchange carrier may not provide interLATA telecommunications services, manufacturing services,

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[7] NPRM at ¶ 79.

[8] See discussion, supra at 3-4.

or interLATA information services, unless the service is provided through a separate affiliate. Similarly, Section 272(e), which sets specific, long-term nondiscrimination requirements for an RBOC or its affiliate, appears to cover an affiliate that is an incumbent local exchange carrier. However, the Commission notes the difference between these sections and Section 272(c), which does not make explicit reference to an RBOC affiliate. Therefore, the Commission must clarify that all separate affiliate requirements apply to an RBOC affiliate that offers local exchange service, as well as the RBOCs themselves.

A. A Vertically Integrated RBOC Affiliate May Engage in Cross-Subsidization and Discrimination

The provision by an RBOC and/or its affiliate of both local exchange service and interLATA service presents a classic example of vertical integration in antitrust law parlance. In this case, the RBOC has market power in the local exchange market and can use that power to acquire an advantage in a vertically related market — in-region, interLATA service. While the separate affiliate requirement of Section 272 is intended to address this concern, the Commission must take the additional step of clarifying that an RBOC cannot circumvent this restriction by having its affiliate provide both interLATA and local exchange service. Although the 1996 Act lays to rest the absolute prohibition upon RBOCs from entering the long distance market, it certainly does not portend a return to market dominance through participation in both the long distance and local markets.

However, this will be the result if RBOCs are permitted to discriminate in favor of the affiliate and to the detriment of competitors for whom the local network is essential to their business. Similarly, a manufacturer or information service provider may need to know technical information about the local exchange network to produce or customize a product that is compatible with the local exchange network.[9] In almost all cases and for the foreseeable future, the incumbent local exchange carrier ("ILEC") — including the RBOCs — will continue to operate the most far-reaching local network.[10] This arrangement poses the risk of a sophisticated scheme of cross-subsidization that goes beyond allocating costs of the competitive affiliate to the regulated entity to recover costs through regulated rates of return. In this case, an affiliate that provides bundled local and long distance service can do so without incurring the additional access charge expense that an IXC must pay to the LEC that connects the call to the local subscriber.[11] The affiliate can operate where competitive local exchange service

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[9] See Timothy J. Brennan, "Vertical Integration by Local Telephone Companies: Economics, Law and Politics," The Antitrust Bulletin at 460-61 (Fall 1995).

[10] Competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") will long be dependent on the incumbent local exchange carrier networks for completion of calls. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, TCG Comments at 2-3.

[11] Implementation of the Local Competition Provisions in the Telecommunications Act of 1995, CC Docket No. 96-98, First Report and Order, FCC 96-325 at ¶¶ 716-732 (released August 8, 1996) ("Local Competition Order"). The Commission has determined that IXCs will continue to pay access charges pursuant to a temporary transitional mechanism. IXCs will continue to pay the carrier common line charge and 75 percent of the transport interconnection charge for all interstate minutes passing over local switches for which the interconnecting carriers pay unbundled local switching element charges. Recovery of these charges is permitted only until the earliest of:

(continued...)

exists and offer a lower priced, bundled service, thereby driving down prices and driving out competitors. In areas where there is no competition, the RBOC can continue to provide regulated service at a guaranteed return. An RBOC affiliate that provides both in-region, interLATA and local exchange service is indeed a structure that harms not only competitors, but more importantly, competition itself.[12/]

In fact, the very theory of divestiture is that the RBOC has no incentive to engage in discrimination or cross-subsidization to the detriment of an unaffiliated carrier if the RBOC itself is not in the interexchange market.[13/] However, now that RBOCs are permitted into this market once a checklist of conditions are met, the separate affiliate requirement is an acknowledgment that incentives to discriminate and/or cross-subsidize are again present, and must be overcome through legislative and regulatory fiat.

[11/](...continued)

> (1) June 30, 1997; (2) the effective date of final decisions by the Commission in both the universal service and access reform proceedings; or (3) if the incumbent LEC is a BOC, the date on which that BOC is authorized under section 271 of the 1996 Act to offer in-region interLATA service.

Id. at ¶ 720.

[12/] The cornerstone of antitrust law is "the protection of competition, not competitors." Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962). The potential for harm to competition is exacerbated in this case by the fact that many states provide streamlined regulations for or have entirely deregulated the activities of a competitive carrier. Indeed, Illinois has completely deregulated its competitive carriers. Under these circumstances, the monopoly local exchange carrier can escape regulation by providing local exchange service through an affiliate.

[13/] See Brennan at 466.

B. Restrictions Imposed on Similar Vertical Integrations Indicate That the Safeguards of Separation Must Be Strictly Maintained

Similar concerns about the anticompetitive implications of vertical integration have been raised in response to recent announcements of mergers in the telecommunications industry. For example, an investigation by the Department of Justice ("DoJ") into the AT&T/McCaw merger resulted in several restrictive conditions to allay concerns about potential antitrust violations presented by the merger. In fact, the RBOCs themselves have expressed concerns with the Time Warner/Turner merger that the vertical integration will foreclose opportunity for participation in the cable market if Time/Warner and Turner discriminate against competitors in the provision of programming options.

The AT&T/McCaw merger raised several anti-competitive concerns related to AT&T's position as a long distance carrier and equipment supplier, which would complement McCaw's position as a national cellular carrier. A vertical integration of the two companies raised the possibility that (1) cellular competitors' costs could be raised if AT&T increased its equipment costs or provided a lesser service standard to McCaw competitors, thereby reducing the incentive to compete; (2) AT&T and McCaw could share proprietary information about equipment suppliers and/or other cellular carriers; and (3) McCaw might try to induce cellular customers to use AT&T for cellular long distance.[14] To address these concerns, the parties agreed at the behest of DoJ on a number of safeguards.

First, McCaw must provide its customers with equal access to all long distance carriers and not bundle long-distance service with its cellular service. The two also may not share proprietary information. AT&T is required to provide equipment to all customers on the same terms that McCaw receives it. Finally, AT&T and McCaw agreed to continue operations as separate companies, showing that the antitrust concerns could only be allayed by keeping a strict separation between the operations of the two companies.[15]

In the similar case of local exchange service and interLATA service, TCG recommends that the Commission clarify and emphasize that the separate affiliate requirement extends to each of the affiliates as well (both local exchange service providers and in-region, interLATA service providers). The Commission has already tentatively concluded that the transfer of network capabilities to affiliates in order to avoid the nondiscriminatory provisions of Section 272 is prohibited.[16] Thus, this tentative conclusion should be affirmed and expanded to prohibit expressly the

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[14] Competitive Impact Statement, U.S. v. AT&T Corp. and McCaw Cellular Communications, Inc., Civil Act. #94-01555 (HHG) at 10-12 (D.D.C. August 5, 1994) (explaining, however, that in areas where an RBOC controlled the McCaw system, equal access provisions require that a cellular customer be able to access his or her long distance carrier of choice).

[15] Id. at 14-38.

[16] NPRM at ¶ 70.

affiliate from offering local exchange service if it provides in-region, interLATA service.

III. NON-DISCRIMINATION SAFEGUARDS MUST INCLUDE REPORTING REQUIREMENTS THAT WILL BE EVALUATED ACCORDING TO OBJECTIVE PERFORMANCE STANDARDS

As the Commission explained in the NPRM, an RBOC could discriminate against a rival by offering inferior services, by charging higher prices, by withholding cooperation to a rival's effort to introduce a new service, or by sharing information with an affiliate with respect to network changes, but not with the competitor.[17] These entities have a history of using their ordering and provisioning processes to impose delays upon CLECs that are attempting to provide competitive local service. Such delays discourage customers from subscribing to CLEC services. For example, ILECs have insisted upon manual ordering processes for CLEC requests, while using faster and more efficient electronic ordering processes for their own customers. Therefore, it is reasonable to assume that, left unchecked, such preferential practices will be extended to RBOC or independent LEC affiliates to the detriment of CLECs.

A. Implementation of Section 272(c)

Section 272(c)(1) is intended to address discriminatory acts by prohibiting an RBOC from "discriminat[ing] between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and

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[17] NPRM at ¶ 65.

information, or in the establishment of standards."[18/] Also, the RBOC must "account for all transactions with an affiliate . . . in accordance with accounting principles designated or approved by the Commission."[19/] TCG agrees with the Commission's tentative conclusion that "at minimum, BOCs must treat all other entities in the same manner as they treat their affiliates, and must provide and procure goods, services, and facilities and information to and from these other entities under the same terms, conditions, and rates."[20/] However, the only way the treatment of other entities can be evaluated is by quarterly reporting requirements under which the RBOC reports its service requests from competitors and affiliates, and provides information with respect to the rates, terms, and conditions at which such services were rendered. These reporting requirements are described in more detail in the discussion of Section 272(e), infra.

In addition, the Computer III non-accounting safeguards are appropriate and must be imposed in conjunction with the reporting requirements recommended here. For example, in that proceeding, the Commission required that "a carrier must provide basic services with technical characteristics that are equal to those of the basic services it utilizes for its own enhanced services" and that "[t]he time periods for installation, maintenance, and repair of basic services and facilities included in a [comparably efficient interconnection] offering must be the same as

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[18/] 47 U.S.C. § 262(c)(1).

[19/] 47 U.S.C. § 272(c)(2).

[20/] NPRM at ¶ 73.

those the carrier provides to its own enhanced service operations."[21] The Commission must require in this proceeding (to the extent that such requirements are not already imposed under Section 251) nondiscriminatory access to unbundled network services;[22] nondiscriminatory access to the same quality of service, installation, and maintenance; and information on changes to the network and new network services.[23]

B. Implementation of Section 272(e)

Although the provisions of Section 272(c) sunset within three years pursuant to Section 272(f) without further Commission action, specific non-discrimination safeguards under Section 272(e) will remain in effect. Therefore, TCG recommends that quarterly reporting requirements to ensure compliance with Section 272(e) should be implemented with respect to both RBOCs and independent local exchange carriers.[24] The quarterly reports must in turn be analyzed based upon objective performance standards. To the extent that Section

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[21] Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Report and Order, 104 FCC 2d 958, 1041 (1986).

[22] See also 47 U.S.C. § 251(c)(3).

[23] See also 47 U.S.C. § 251(c)(5).

[24] The recommended reporting requirements are similar to those implemented by the Commission in Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084, 3093-94, 3096 (Appendix B) (1990). Consistent with the Commission's holding in that decision, RBOCs should not report on average intervals for installation and maintenance activities, but should provide on a quarterly basis reports on requests by both affiliates and competitors and responses by the parent.

272(c) imposes broader safeguards than Section 272(e), quarterly reporting requirements should be imposed pursuant to that provision as well, and terms shared by the two subsections must be read consistently.

The reporting entity will provide data in the quarterly report detailing the following: (1) as measured from the time of the request to delivery of the service, the length of time taken to provide telephone exchange service and exchange access to itself and its affiliates; (2) all facilities, services, or information provided to its affiliates and the terms and conditions under which they were provided; (3) all charges made directly or imputed to itself for providing an affiliate with telephone exchange service and exchange access; (4) the rates, terms, and conditions under which it made available to its affiliate any interLATA or intraLATA facilities or services; and (5) the information required by items (1) through (4), but with respect to all or some representative group of the interconnecting CLECs. These reporting requirements, consistent with Section 272(e), provide the framework by which outside parties, and more importantly, this Commission and state commissions, to assess whether or not RBOCs are meeting the ongoing nondiscrimination requirements of Section 272(e).

In addition, the Commission has established in its <u>Local Competition Order</u> that a record must be compiled with respect to ILEC access to and provision of unbundled elements in a nondiscriminatory manner. The Commission expects that the states will adopt "specific rules determining the timing in which incumbent

LECs must provision certain elements"[25] and that "incumbent LECs should be required to fulfill some type of reporting requirement to ensure that they provision unbundled network elements in a nondiscriminatory manner."[26] For the purposes of this proceeding, such reporting requirements similarly must include both the record of RBOC service with its affiliates and its record of service with all or a representative number of its interconnecting competitors.

Objective performance standards that include required installation intervals, mean time to repair, service availability standards, and similar performance criteria also must be implemented, against which the information provided in quarterly report can be compared. As the Commission concluded in its recent Local Competition Order, "section 251(c)(2) requires interconnection that is 'at least' equal in quality to that enjoyed by the incumbent LEC itself. This is a minimum requirement. Moreover, to the extent a carrier requests interconnection of superior or lesser quality than an incumbent LEC currently provides, the incumbent LEC is obligated to provide the requested interconnection arrangement if technically feasible."[27]

Regulations promulgated to implement Section 272(e) must remain in effect with respect to the affiliate as long as it exists.[28] By its express language,

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[25] Local Competition Order at ¶ 310.

[26] Id. at ¶ 311.

[27] Id. at ¶ 225.

[28] See NPRM at ¶ 80.

Congress clearly intended that all the safeguards instituted pursuant to Section 272(e) would survive the sunset of other requirements. To the extent that Sections 272(e)(2) and 272(e)(4) seem to anticipate the continued existence of an affiliate, regulations implemented in conjunction with these provisions should follow the service itself, regardless of the identity of the entity that provides it.

IV. STRUCTURAL SAFEGUARDS MUST PROVIDE DISTINCT SEPARATIONS BETWEEN THE RBOC AND ITS AFFILIATE IN EVERY OPERATIONAL ASPECT

In drafting the Telecommunications Act of 1996, Congress clearly recognized that a fully competitive telecommunications industry would not exist until the RBOCs' local monopoly bottleneck was broken. Before an RBOC is allowed to provide interLATA interexchange service within its territory, for example, the RBOC must enter into an agreement with a competing local service provider or providers offering service ". . . either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier."[29] Without such requirements, the RBOCs would use their considerable market power to frustrate competition in both the local and interLATA markets.

In addition to the pre-entry safeguards of Section 271, Congress also recognized that additional, "post-entry" safeguards are necessary, not only to

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[29] 47 U.S.C. § 271(c)(A).

encourage the RBOCs to open their territories to competition, but to prevent monopoly abuses afterward. For that reason, Congress required the RBOCs to offer interLATA service via a separate affiliate, subject to the standards of Section 272(a). As insurance against monopoly abuse, these standards are critical to the success of both local and interLATA competition. Without such protections, the RBOCs would be free to use its largely non-competitive services (local exchange) to internally cross-subsidize the service in which they faced immediate competition (interLATA long-distance), a violation of Section 254(k) of the Act. By weakening their in-region, long-distance rivals, the RBOCs would have a freer hand to engage in similarly anticompetitive activities in the local exchange market. Until such time as the local exchange bottleneck is irreparably broken, therefore, the Commission should strictly enforce the provisions of Section 272(b). In implementing the Section 272(b), the Commission must implement regulations requiring separate affiliates to provide their own facilities, prohibiting the RBOC and affiliate from sharing officers and employees, and establishing that the affiliate must stand on its own credit history and not the parent RBOC's.

A. Section 272(b)(1)

TCG believes that the standards for independent operation established in the Competitive Carrier decision are most appropriate for this section of the Act. As the NPRM notes, the Competitive Carrier proceeding required that the affiliate maintain separate books of account, that it not jointly own transmission or switching with the parent company, and that it obtain exchange services at tariffed rates and conditions.[30] Clearly, the Act did not intend for the separate affiliates to refrain from building their own facilities, an outcome that might be inferred from the Computer II proceeding.

B. Section 272(b)(3)[31]

To prevent the sharing of information that might be used to the competitive advantage of the affiliate, TCG strongly encourages the Commission to adopt the strictest standards with regard to this section. We agree with the Commission's tentative conclusion that the standards adopted in the Computer II decision regarding in-house services are not consistent with the Act. To the extent that certain outside services will have no bearing on the competitiveness of the affiliate or its parent, TCG does not believe that such services must be acquired separately.

C. Section 272(b)(4)

Although the NPRM notes that the joint credit prohibition of the Act ". . . appears to be designed to protect subscribers to BOC's exchange and exchange access services from bearing the cost of default by BOC affiliates," TCG notes another aspect to the credit issue that has a greater bearing on the competitiveness of the industry. The RBOCs have a long and generally positive credit history, established over the years largely through the guaranteed revenue

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[30] NPRM at ¶ 59.

[31] Section 272(b)(2) is the subject of a separate proceeding. See Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996, CC Docket No. 96-150, FCC 96-309, released July 18, 1996.

stream generated by their captive customers. Contrary to the dire predictions of some RBOC representatives, these revenue streams are likely to remain with the RBOCs for some time to come. The favorable credit ratings that permit the RBOCs to finance their operations at low rates should not be transferred to their new affiliates to finance their unproven initiatives against rivals that have had no captive customers. TCG agrees with the tentative conclusion of the NPRM that the affiliate should not be allowed to borrow on the strength of the parent's signature.

D. Section 272(b)(5)

This section, like Section 272(b)(3) is designed to prevent the sharing of proprietary information which would confer an unfair advantage on the affiliate relative to its competitors. To a large extent, as implied by the NPRM, both the accounting safeguards that will be developed pursuant to Section 272(b)(2), and the separate employee safeguards of Section 272(b)(3) already address this issue. TCG does not propose any additional safeguards at this time.

V. ENFORCEMENT OF STRUCTURAL AND NON-DISCRIMINATION SAFEGUARDS

The Commission should implement a separate, expedited complaint process by which competitors can raise and address discrimination by RBOCs in favor of their affiliates. Pursuant to the enforcement provision set forth in Section 271(e)(6), the Commission should review and handle such complaints within 90